IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17-03-2006

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THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION NO.9477 OF 2004

M/s. Sun Industries,
Rep. by its Proprietor
K.T. Ramaraja
Mudangiar Road,
Rajapalayam 626 117. .. Petitioner

Vs.

1. The State of Tamil Nadu,
   Rep. by its Secretary to Government,
   Industries (MMD2) Department,
   Fort St. George, Chennai 600 009.

2. The Commissioner of Geology & Mining,
   Guindy, Chennai 600 032. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of writ of Certiorarified Mandamus calling for the records on the file of the 1st respondent in his order in G.O.(D) no.50 Industries (MMD2) Department dated 5.3.2004 and quash the same and consequently direct the 1st respondent to reconsider the petitioner's renewal application on its own merits and in accordance with law in respect of Limestone quarry situated in S.No.270/2B over an extent of 5.29 acres in Pandapuli Village, Sankaran Koil Taluk, Tirunelveli District.

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For Petitioner : Mr.K.R. Krishnan

For Respondents : Mr.S. Gomathynayagam

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J U D G M E N T

The facts giving rise to the present writ petition are as follows :-

The petitioner was initially granted mining lease for quarrying Limestone over an extent of 5.29 acres in S.No.270/2B in Pandapuli Village, Sankarankoil Taluk in Tirunelveli District for a period of three years. The lease deed was executed on 18.8.1983 and the period of lease was to expire on 17.8.1986. Subsequently, the petitioner applied for grant of renewal of the said lease for a period of 20 years. The District Collector and the Director of Geology and Mines recommended for grant of renewal for a period of 10 years. Considering the recommendation, the Government granted extension over the said area for a period of 10 years with effect from 18.8.1986. Thereafter the petitioner filed further application for renewal for further period of 10 years. However, such application for renewal was kept pending on some ground or the other and ultimately it was rejected under the impugned order dated 5.3.2004 mainly on the ground that the area in question has been kept reserved for exploitation by the Government through Tamil Nadu Cements Corporation Limited by G.O.Ms.No.672 Industries (MMD.2) dated 31.8.1999. Such order is being challenged in the present writ petition.

2. The main contention raised by the learned counsel appearing for the petitioner is to the effect that the basic reason for rejection of the renewal application is untenable as G.O.Ms.No.672 dated 31.8.1999 itself indicates that such reservation in favour of Tamil Nadu Cements Corporation Limited would not be applicable to the area already held under the prospecting licence or mining lease. It is further submitted in this connection that without first deciding about the extension of lease in favour of the petitioner, such land should not have been reserved for exploitation by Tamil Nadu Cements Corporation Limited. Learned counsel appearing for the petitioner has pointed out that as per the provisions contained in Rule 24-B of the Mineral Concession Rules, the person is entitled for the period claimed by him not exceeding 20 years.

3. In the counter affidavit it is contended that even though the lease could have been extended for a maximum period of 20 years, the Government in its discretion extended lease for a period of 10 years and such lease must be taken to have been expired on expiry of 10 years from 1986 and therefore it cannot be said that the said area was not covered under the notification dated 31.8.1999, reserving the area for exploitation by the Tamil Nadu Cements Corporation Limited.

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4. Rule 24-B of the Mineral Concession Rules, being relevant is quoted hereunder:-

> "24-B. Renewal of mining lease in favour of a person using the mineral in his own industry.- Every person who is holding a mining lease for a mineral which is used in his own industry shall be entitled for the renewal of his mining lease for a period not exceeding 20 years unless he applies for a lesser period."

5. The first renewal was granted on 29.8.1990 for a period of 10 years with effect from 18.8.1986. From such order it is apparent that the petitioner had applied for renewal for a period of 20 years and not for a lesser period. A fair reading of Rule 24-B makes it clear that a right of renewal is vested with the lessee if he is using the mineral for his own industry. However, such renewal cannot exceed for more than 20 years. The expression "unless he applies for a lesser period" in conjunction with the expression that "such person shall be entitled for renewal of his mining lease for a period not exceeding 20 years" makes it clear that the right of renewal is for a period applied for by the lessee, but no discretion is with the Government to renew it for a period lesser than the period applied for. The only embargo, however, is that the person cannot apply for extension for a period not exceeding 20 years.

6. It is true that renewal was granted only for a period of 10 years and at that stage the petitioner did not complain. The fact that the petitioner did not complain does not mean the petitioner has given up his right for renewal for a period of 20 years. It cannot be said that there was a conscious waiver of right or acquiescence, particularly keeping in view the fact that a person while faced with situation with a State authority would always prefer to avoid the path of confrontation. Therefore, merely because the petitioner had kept silent at that stage and did not seek for immediate clarification that the renewal should be for a period of 20 years, it cannot be construed to mean that the petitioner had given up his right of renewal for the period permissible. Since the petitioner had prayed for renewal for 20 years, the renewal should have been for a period of 20 years. Thereafter the petitioner had filed an application for renewal for a period of 20 years well before the expiry of 10 years. This should have been held to be in continuation of the earlier lease. At that stage, the only defect which is pointed out related to the nature of the land and it was indicated as if a part of the land was Odai. However, at the time of initial grant and first renewal, it was accepted by the authorities that the land was not a perennial source of water, but only water was collected during rainy season. If there was no objection at the time of initial grant or at the time of first renewal, such reasoning cannot be

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used to defeat the right of the petitioner for renewal for the maximum period permissible.

7. The notification reserving the land in favour of Tamil Nadu Cements Corporation Limited itself envisages that such reservation would not be applicable in case of areas already held under any prospecting licence or mining lease. The present application for renewal has been rejected only on the ground that such area has been reserved in favour of Tamil Nadu Cements Corporation Limited. Since the original period of renewal must be taken to be for a period of 20 years, it must be held that notification would not be applicable to this land.

8. For the aforesaid reasons, the present writ petition is allowed and the order passed by the Government is quashed. It is not known whether the petitioner has been permitted to carry on the mining during the interregnum period. If he has been allowed to carry on the mining, lease shall continue till the period of expiry of 20 years from 18.8.1986. However, if the petitioner has not been permitted to carry on the mining, he shall be permitted to have a further renewal of 10 years from the date of fresh issuance of the order passed by the appropriate authority. This direction should be given effect to within a period of two months from the date of receipt of the order.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

dpk

To

1.The Secretary to Government,
Industries (MMD2) Department,
Fort St. George, Chennai 600 009.

2. The Commissioner of Geology & Mining,
Guindy, Chennai 600 032.

WP.NO.9477/2004

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